

HOUSE BILL 3445
By Curtiss

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 17, Part 4, relative to the sale of ephedrine, pseudoephedrine and products containing ephedrine.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 17, Part 4, is amended by adding the following new sections:

Section 39-17-4__.

(a) It is an offense for any person to knowingly sell or deliver with the intent to sell in any single over-the-counter sale:

(1) More than one hundred (100) tablets or any number of packages that contain a combined total of more than three (3) grams, of any drug containing a sole active ingredient of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers; or

(2) More than three (3) packages of any combination drug containing, as one of its active ingredients, ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers, or any number of packages of such combination drug that contain a combined total of more than nine (9) grams of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers.

(b) All packages of any drug having a sole active ingredient of ephedrine, pseudoephedrine, or in combination with less than therapeutically significant quantities of other active ingredients, shall be displayed and offered for sale only

behind a counter where the public is not permitted, within a locked display case, or within six (6') feet of a register located on a check-out counter.

(c)

(1) Any retailer who sells to a person any product having a sole active ingredient of ephedrine, pseudoephedrine, or any of their salts, or in combination with less than therapeutically significant quantities of other active ingredients shall require such persons to show proper identification and to sign a register.

(2) The register described in subsection (c)(1) shall be created by any retailer that sells a product or products described in subsection (c)(1) and shall require at least the following information:

(A) The specific quantity of ephedrine or pseudoephedrine purchased;

(B) The signature of the purchaser;

(C) The name and residential or mailing address of the purchaser; other than a post office box number;

(D) The number of the purchaser's motor vehicle operator's license or other proper identification at the time of the purchase;

(E) A description of how the purchaser intends to use the substance;

(F) The date of such purchase; and

(G) The signature of the retailer as witness to the purchase and identification of the purchaser.

(3) The retailer shall retain each original register for three (3) years in a readily presentable and readable manner, and present the register upon demand by any law enforcement officer or authorized representative of the district attorney general's office.

(4) As used in this section, "proper identification" means a valid motor vehicle operator's license or other official and valid state-issued identification of the purchaser that contains a photograph of the purchaser.

(d) The provisions of this section shall not apply to:

(1) Any product labeled pursuant to federal regulation for use only in children under twelve (12) years of age;

(2) Any product that the state department of health, upon application of a manufacturer, exempts by rule from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors;

(3) The sale of any animal feed products containing ephedrine or any naturally occurring or herbal ephedra or extract of ephedra; or

(4) Products dispensed and sold pursuant to a prescription of a duly licensed practitioner who is authorized by the laws of this state to prescribe medications containing ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers.

(e) Any person who is considered the general owner or operator of the outlet where ephedrine, pseudoephedrine, or phenylpropanolamine products are available for sale who violates subsection (a) of this section shall not be penalized pursuant to this section if such person documents that an employee training program was in place to provide the employee with information on the state and federal regulations regarding ephedrine, pseudoephedrine, or phenylpropanolamine.

(f) This section shall supercede any municipal ordinance that attempts to regulate or restrict the sale of any product governed by the provisions of this section.

(g)

(1) A violation of this section is a Class A misdemeanor punishable by fine only.

(2) The fine for a first violation of this section shall be one hundred dollars (\$100).

(3) The fine for a second violation of this section shall be five hundred dollars (\$500).

(4) The fine for a third or subsequent violation of this section shall be two thousand dollars (\$2,000).

(5) Each sale or delivery with the intent to sell in violation of this section constitutes a separate and distinct offense.

Section 39-17-4__.

(a) All retail merchants and any other establishment that sells at retail any product containing a sole active ingredient of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers or any combination product containing, as one of its active ingredients, ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers, is encouraged to actively participate in the Meth Watch program established, sponsored, and operated by the Tennessee bureau of investigation.

(b) Such program is designed to heighten awareness in the business community to the dangers and ready availability of methamphetamine in the community and to allow local businesses to aid law enforcement in the fight against this rapidly increasing problem by limiting the sale or theft of methamphetamine precursors that may later be used for illegal and dangerous purposes.

SECTION 2. This act shall take effect on July 1, 2004, the public welfare requiring it.